Supreme Court, U.S.
FILED

94 217 AUG 1 1994

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES
OCTOBER TERM, 1994

SUSIE DYER

PETITIONER

vs.

UNITED STATES OF AMERICA

PLAINTIFF-RESPONDENT

&

136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT, 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA,

DEFENDANT-RESPONDENT
&

DYER'S TROUT FARMS, INC.

CLAIMANT-RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Mrs. Susie Dyer (Pro Se)
Route 2, Box 472
Hiawassee, GA 30546
706-896-3069

10 2 PM

QUESTIONS PRESENTED FOR REVIEW

1. Did the Circuit Court err when it failed to stay enforcement of a forfeiture action in order to allow the Towns County Superior Court to make a valid determination according to State law, in State Court of issues of ownership relating to the validity of 1978 deed to an invalid corporation?

2. Did the Circuit Court err when it denied the Petitioner's motion to intervene as claimant on appeal of the forfeiture action against her farm, when she had no prior notice of her own standing to contest the forfeiture and any notice of the forfeiture itself was therefore meaningless?

3. Did the Circuit Court err when it denied the Petitioner's motion to intervene on the appeal of a forfeiture by a purported corporate title holder whose validity was assailed when its innocent owner defense was denied, without

evidence of an agency relationship with the alleged wrongdoer, vesting ownership of the res in Petitioner?

4. Does asset forfeiture, as applied to a family homestead such as the property at issue, violate Article III, Paragraph 3 of the United States Constitution?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW x

JURISDICTION OF THE SUPREME COURT xi

CONSTITUTIONAL PROVISIONS AND STATUTES xiii

STATEMENT OF THE CASE 1

ARGUMENT AND LEGAL AUTHORITY 11

5. DENIAL OF INTERVENTION AS CLAIMANT ON APPEAL VIOLATED THE TENTH AMENDMENT WHERE PETITIONER WAS ENTITLED TO A STATE COURT JURY TRIAL TO DETERMINE ISSUES OF OWNERSHIP. 11

a. In a Forfeiture Action, the Question of Whether a Corporation or an Individual Owns the Property is for the Jury. 11

b. Petitioner is Entitled to a State Jury trial on Ownership 15

c. Georgia Law Requires that the Corporate Entity be Disregarded. 16

d. The Deed of 1978 is not Valid 20

e. The FARM Remained in the Residuary of the Estate 22

6. DENIAL OF INTERVENTION DEPRIVED PETITIONER OF DUE PROCESS BECAUSE SHE HAD NO PRIOR NOTICE OF HER OWN STANDING TO CONTEST THE FORFEITURE AND ANY NOTICE OF THE FORFEITURE ITSELF WAS

MEANINGLESS 23

a. Due Process Requires that Petitioner Be Apprised of Her Standing to Contest the Forfeiture. 24

b. Merits of Intervention 29

c. Applicable Factors 32

1) Timeliness 32

2) Sufficiency of Interest 37

3) Impairment of Interest 38

4) Inadequacy of Representation 38

7. DENIAL OF THE INNOCENT OWNER DEFENSE ASSAILED THE VALIDITY OF THE CORPORATION 39

8. FORFEITURE VIOLATES U.S. CONSTITUTION ART. 3, SEC. 3. 46

REASONS FOR GRANTING CERTIORARI 49

CERTIFICATE OF SERVICE 51

APPENDIX

Order of District Court
Eleventh Circuit Order
Memorandum of Hearing

TABLE OF AUTHORITIES

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). 25

Banco Popular de Puerto Rico v. Greenblatt 964 F.2d 1227 (1st Cir. 1988) 13, 14, 26 33, 34

Brown v. Momar, Inc., 411 S.E.2d 718, 201 Ga.App. 542 (Ga.App. 1991). 24

City of Griffin v. McKneely, 115 S.E.2d 463, 101 Ga.App. 811 (Ct.App. 1960). 20

Davis v. Davis, 419 S.E.2d 913, 262 Ga. 420 (1991). 19

Farmers Warehouse of Pelham v. Collins, 220 Ga. 141, 137 S.E.2d 619 (1964). 17

Federal Deposit Insurance Corp. v. U.S. 654 F.Supp 794 (N.D.Ga. 1986) 17

Fludd v. Tiller, 184 Ga.App. 93, 360 S.E.2nd 647 (C.A.Ga. 1987). 16

Fuentes v. Shevin 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972). 25

Gary v. Radford, 59 S.E.2 915, 207 Ga. 38 (S.Ct.Ga. 1950). 21

Gift Collection Ltd., v. Small Business Administration, 738 F.Supp. 487 (N.D.Ga. 1989). 40

Hurd v. Illinois Bell Telephone co. 234 F.2d 942 (7th Cir. 1956). 31

In re Universal Profile, Inc., 6 B.R. 196, 201 (N.D.Ga. 1980) 17

In re Davis, 16 B.R. 553, 554 (U.S.Bank.Ct., S.D.Fla. 1981). 39

Jenkins v Judith Sales Int'l, Inc., 332 S.E.2d 687, 175 Ga.App. 171 (1984). 41, 43

Kelly v. Austell Building Supply, 297 S.E.2d 292, 164 Ga.App. 322 (1982). 44

Lucas v. Hope, 515 F.2d 234 (5th cir. 1975) Reh.Den. 523 F.2D 1055, cert.Den. 96 S.Ct. 1464, 424 U.S. 967, 47 L.E.2D 734. 15

Marett v. Professional Insurance Careers, 410 S.E.2d 373, 201 Ga.App. 178. 17
Stillman v. Tempo Carpets, 174 Ga.App. 66, 329 S.E.2d 197 (1985). 18

McCollum v. Loveless, 196 S.E.430, 432, 185 Ga. 748 (S.Ct.Ga. 1938). 20

McCullen v. Cooper, 125 Ga. 435, 54 S.E.97 21

McGehee v. Pope, 105 S.E.2nd 26 (S.Ct.Ga. 1928) 21

Meyer v. Macmillan Publishing Co., Inc. 85 F.R.D, 149, 150 (D.C.N.Y. 1980). 33

Miller v. United States, 114 F.2d 267, 269 (7th Cir. 1940), cert. denied 313 U.S. 591, 61 S.Ct. 1114, 85 L.Ed.1545 (1941). 30

Nevilles v. E.E.O.C. 511 F.2d. 303, 305 (C.A.Mo. 1975). 32

O.C.G.A. §53-4-2. 21

O.C.G.A. §53-2-103 24

O.C.G.A. §53-2-115(a). 24

Owens v. Oliver 97 S.E. 856. 21

Owens v. Oliver 97 S.E.856, 146 Ga. 675 (S.Ct.Ga. 1918). 20

Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 785 (1st Cir. 1988). 34

Resort Timeshare Resales, Inc. v. S art 764 F.Supp. 1495 (S.D.Fla. 1991). 32, 33

Robinson v. Hanrahan, 409 U.S. 38, 34 L.Ed.2d 47, 93 S.Ct. 30 (1972) 25

Sanquine v. U.S. Interior, 736 F.2d at 1420. 38

Sharp v. Autry, 188 S.E.354, 183 Ga. 282 (S.Ct.Ga. 1936. 20

Slade v. Barber, 37 S.E.2d 143, 200 Ga.405 (S.Ct.Ga. 1946). 20

Slade v. Barber, 37 S.E.2d 143, 200 Ga.405 (S.Ct.Ga. 1946). 23

SUSIE DYER vs. 136.00 ACRES MORE OR LESS LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT, 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA, Civil Action File No. 94-CV-40DB 7

Thornton v. Parker, 68 S.E.2d 695, 208 Ga. 633 (S.Ct.Ga.1952). 20

Trans-American Communications, Inc. v. Nolle, 134 Ga.App. 457, 214 S.E.2d 717 (1975). 17

U.S. v. One Parcel of Real Estate 831 F.Supp. 1578, at 1583 (S.D.Fla. 1993). 39

U.S. v. Fidelity Capital Corp, 920 F.2d 827 (11th Cir. 1991). 41

U.S. v. Saccoccia 823 F.Supp. 994 (D.R.I. 1993). 47

U.S. v. James Daniel Good Real Property, et.al., 62 L.W. 4013 (October 6, 1993). 25

U.S. v. 1977 Porsche Carrera, 946 F.2d. 30 (C.A.5, Tex. 1991) 15, 17

U.S. v. Fidelity Capital Corp., 888 F.2d 1344 (11th Cir. 1991). 18

U.S. v. Premises, Real Property and Acreage, 831 F.Supp. 66 (N.D.N.Y. 1993). 25

U.S. v. Property at 4492 S. Livonia Rd., Livonia, 889 F.2d 1258 (2nd Cir. 1989. 27

U.S.C.A. X. 15

United States v. Jefferson County, 720 F.2d 1511 (11th Cir. 1983). 31, 33

United States v. One Parcel of Land, 965 F.2d 311 (7th Cir. 1992). 43, 44, 45

United States v. 4657 Acres in Martin County, 730 F.Supp. 423 (S.D.Fla. 1989) 43

United States v. 4657 Acres in Martin County, 730 F.Supp. at 427. 44

United States v. D.K.G. Appaloosas, Inc., 630 F.Supp. 1540 (E.D.Tex. 1986) 11, 13

United states v. $38,000.00 in United States Currency, 816 F.2d 1538, 1543 (11th Cir. 1987). 28

United Airlines, Inc. v. McDonald, 97 S.Ct. 2464, 432 U.S. 385, 53 L.E.2d 423 (1977), reh den. 98 S.Ct. 623, 434 U.S. 989, 54 L.E.2d 485, cert. den. 99 S.Ct. 2869, 442 U.S.934, 61 L.E.2d 303, reh.den. 100 S.Ct. 196, 444 U.S. 890, 62 L.E.2d 127. (1977). 29

United States v. 141st Street Corporation, 911 F.2d 870 (2nd Cir. 1990). 36, 43

W. Fletcher, 3 Corporations §§ 790, 793 (1986). 45

Warren v. Federal Land Bank of Columbia. 157 Ga. 464, 468, 122 S.E.40, 33 A.L.R. 45 (S.Ct.Ga. 1923). 23

Weyman v. Atlanta, 122 Ga. 539, 50 S.E.492. 21

Williamon v. Williamon, 74 S.E.2d 71, 209 Ga.494 (S.Ct.Ga. 1953). 21

Williams Plaza, Inc. v. Sedgefield Sportswear, Division of Blue Bell, Inc., 164 Ga.App. 720, 297 S.E.2d 342 (1982) 17

OPINIONS BELOW

UNITED STATES OF AMERICA vs. 136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA, Civil No. 2:92-CV-199-WCO, Order Granting Government's Motion for Summary Judgment and forfeiting property to the United States, and denying claimant's motion for summary judgment (11th Cir., Jan. 18, 1994).

UNITED STATES OF AMERICA vs. 136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA, No. 94-8158, Order Denying Susan (sic) Dyer's Motion to Intervene as Claimant on Appeal (11th Cir., May 4, 1994).

Petitioner vs. 136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE

18TH DISTRICT 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA, Civil Action File No. 94-CV-40DB, Memorandum of Hearing Delaying Ruling on Ownership Issue (Superior Court, Towns County, June 28, 1994).

JURISDICTION OF THE SUPREME COURT

The statutory provision on which the jurisdiction of this Court is invoked is 21 U.S.C. § 881 (a)(7). Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit filed on May 4, 1994, denying Petitioners motion to intervene as a claimant on appeal and to stay the enforcement, UNITED STATES OF AMERICA vs. 136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA, No. 94-8158.[1]

1. Additional parties were Georgia Farm Credit, ACA and Credit Bank of Columbia, claimants.

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Const. Amend X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. Amend. V. No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Article III, Paragraph 3.

. . .

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the person attainted.

21 U.S.C. § 881 (a)(7). The following shall be subject to forfeiture to the United States and no property right shall exist in them:

. . .

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any matter or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Fed. Rules Civ. Proc. Rule 24, 28 U.S.C.A.

(a)(2) . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposing of the action may as a procedural matter impair or impede the applicants ability to protect that interest, unless that applicant's interest is adequately protected by the existing parties.

(b) Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

O.C.G.A. §53-2-104 24

(a) A lapsed or void legacy or personal property shall fall into the residuum and go to the residuary legatee.

(b) Ordinarily, real estate described in a lapsed or void devise shall descent to the heir; but under a devise necessarily contingent when the will was made, on failure tof the contingency, the residuary legatee shall take.

O.C.G.A. §53-2-115(a). 24

(a) Any person to whom an interest in property is transferred, or who succeeds to an interest in property by contract or by operation of law, or any fiduciary acting on behalf of such person may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place provided in subsection (b) of this Code section. For purposes of this Code section the term "interest in property" includes any powers over

or rights with respect to such property. The instrument shall:

(1) Describe the property or part thereof or interest therein renounced;

(2) Be signed by the person renouncing; and

(3) Declare the renunciation and the extent thereof.

O.C.G.A. §53-4-2. 21

The following rules shall determine how are the heirs at law of a deceased person;

(1) Upon the death of the husband or wife without lineal descendants, the surviving spouse is the sole heir and upon payment of that deceased spouse's debts, if any, may take possession of the estate without administration;

(2) If, upon the death of the husband or wife, there are children or representative s of deceased children, the surviving spouse shall have a child's part, unless the shares exceed four in number, in which case the surviving spouse shall have one-fourth part of the estate and the children shall have three-fourths part of the estate; and the surviving spouse and children shall take per capita but the descendants of the children shall take per stirpes. . . .

STATEMENT OF THE CASE

SUSIE DYER, Petitioner, known in Hiawassee as "GRANNY SUSIE" is the widow and sole heir to the residuary of the estate of PAUL DYER. She resides at the FARM, Route 2, Box 472, Hiawassee, GA 30546. The FARM is the subject of a forfeiture action by the UNITED STATES against its purported titleholder, Dyer's Trout Farms, Inc. Petitioner prays for Certiorari to overturn the final judgment rendered against her when her Motion to Intervene on Appeal and was denied by the 11th Circuit Court of Appeals on May 4, 1994, and her Motion to Stay the Enforcement was not reached. The forfeiture was based on the alleged marijuana cultivation by WILLIAM DYER, Petitioner's son.

DYER'S TROUT FARMS, INC. was incorporated by PAUL DYER in 1976, to engage primarily in the raising and selling of fish (rainbow trout) and livestock (cattle). PAUL DYER transferred the FARM to DYER'S TROUT FARM, INC. in 1978.

The only consideration for the transfer of the farm to the CORPORATION was $10.00, and "good and valuable consideration," i.e., stock.

The control of PAUL DYER, over the CORPORATION was nearly absolute. He held office indefinitely and was the only officer who knew the corporations' finances. PAUL DYER exclusively controlled the use of his residence and the corporate property upon which it was located.

PAUL DYER died on February 28, 1981, leaving the residuary of his estate to Petitioner as sole heir, and to the children and grandchildren if she were to predecease him. At the time of his death, PAUL DYER owned 52% of the stock in the corporation, and the sons owned 16% each. PAUL DYER willed his stock to WILLIAM DYER, but the transfer was never recorded.

PAUL DYER did not leave the FARM to WILLIAM DYER. At no time, past or present, did WILLIAM DYER hold title to the FARM.

PAUL DYER's intent in giving the corporate stock to WILLIAM DYER was that the farm remain in the family. No shareholder could sell stock without first offering it to the corporation itself, then the other shareholders. It was not to be disposed of freely.

PAUL DYER gave the stock to WILLIAM Dyer because WILLIAM DYER had looked after the farm's affairs during PAUL DYER's last illness. He told him, "You're the best one to hold it together."

The corporate entity was disregarded and made a mere instrumentality for the transaction of the families affairs; that there is such a unity of interest and ownership that the separate personality of the corporation and the owners no longer exist.

This is the position taken by the UNITED STATES in its forfeiture action against the Dyer CORPORATION. Meetings were no more than informal chats during family gatherings, and minutes were not kept, nor filed with the Secretary of State. There was no difference between the running of the farm as a corporation running it as a family-owned proprietorship save for the filing of the $25.00 annual fee.

On September 10, 1991, the defendant property, hereinafter the FARM was raided by the Georgia Bureau of Investigation and marijuana plants were found. On June 22, 1992, William Dyer was found guilty after a non-contested trial of simple possession of less than one ounce of marijuana.

On October 20, 1992, the UNITED STATES, respondent in this action, moved for forfeiture of the FARM based on the alleged manufacture

of marijuana by Petitioner's son, WILLIAM DYER. The CORPORATION filed a timely claim and answer. The UNITED STATES filed its Motion for Summary Judgment on August 3, 1993, and the Claimant filed a Response and its own Motion for Summary Judgment on August 9, 1993. Plaintiff argued that the innocent owner defense should be denied because the CORPORATION's President and majority stockholder was growing marijuana on the property.

On January 18, 1994, the U.S. District Court for the Northern District of Georgia, Chief Judge William C. O'Kelley, entered an order granting the UNITED STATES summary judgement and forfeiting the FARM, and denying DYER'S TROUT FARMS, Inc., an innocent owner defense under 21 U.S.C. § 881(a)(7). There was no evidence that WILLIAM DYER's cultivation of marijuana was done as an agent of the

corporation, or in his capacity as its President, or that the corporation benefited from it. Rather, the Court reasoned that the extent of his control and the amount of stock owner by WILLIAM DYER permitted his knowledge to be imputed to that corporation. The CORPORATION filed its notice of appeal on February 4, 1994 and requested a Stay of Enforcement.

Petitioner, however, was not aware that the corporation was not, and had never been, a lawful entity separate and distinct from its shareholders. On February 22, 1994, her granddaughter DARLENE PALMER explained to her the basis for the opinion of the Honorable William C. O'Kelley of January 18, 1994.

Petitioner is the true owner of the FARM. However, she did not realize that she had standing to contest its forfeiture until her granddaughter, DARLENE PALMER, discussed the

January 18, 1994 ORDER with Attorney Nancy Lord. Her valid ownership of the FARM, and her lack of notice as to this standing, entitled her to intervene in the forfeiture proceedings on appeal.

Upon learning of the defects in the corporation, Petitioner has learned that she holds complete equitable title to the FARM. On March 3, 1994, she filed a Motion to Intervene as Claimant on Appeal, under F.R.C.P. 24(a)(2) and 24(b), in the alternative, a Motion to Stay Enforcement to permit Towns County to determine issues of ownership, and a Claim and Answer. Simultaneously, Petitioner filed a Petition to Quiet Title in the Towns County Superior Court, SUSIE DYER vs. 136.00 ACRES MORE OR LESS LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT, 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA, Civil

Action File No. 94-CV-40DB, and a Lis Pendens. She filed suit to cancel the deed of 1978 to a void corporation, clear title, and restore the property known as the FARM to its rightful owner, Petitioner.

The District Court correctly treated the CORPORATION as a non-existent entity, reasoning that was tantamount to veil piercing. Petitioner agrees with the District Court that the CORPORATION was not a valid, separate entity. She points out however, that corporate formalities were not maintained by PAUL DYER either, and that the CORPORATION was void ab initio. Petitioner filed her Motion to Intervene on March 3, 1994, arguing that if the CORPORATION was not valid, neither was the 1978 transfer of the FARM.

The FARM never left the estate of PAUL DYER, or which Petitioner is the sole heir and beneficiary to the residuary. Her property

interested vested upon her late husband's death in 1981. To obtain the proper State Court determination of her property ownership interest, Petitioner also filed a Motion for a Stay of Enforcement on March 3, 1994, along with appropriate State Court filings. The Motion to Intervene was denied on May 4, 1994 and the issue of the Stay was not reached.

The State Court action is still pending.

The UNITED STATES filed a Motion of Opposition to Petitioner's Motion to Intervene on March 22, 1993, arguing that she failed to file a claim in a timely manner. Petitioner's Motion to Intervene was denied on May 4, 1994.

On March 9, 1993, the UNITED STATES filed a Motion to Dismiss the Towns County case on the grounds that the UNITED STATES held title to the property, necessitating that any quiet title action be filed under 28 U.S.C. § 2409a. This statute is inapplicable to forfeiture.

The UNITED STATES failed to timely answer Petitioner's Petition, and Petitioner moved for a Default judgment on May 3, 1994. A number of responsive pleadings were filed by the UNITED STATES, Petitioner, and DYER's TROUT FARMS.

The Dyer family is well-known and respected in Hiawassee, Georgia. Two of the Judges in Town's County were disqualified to avoid the appearance of impropriety. A Senior Judge from Fulton County, Hon. John S. Langford was appointed as a visiting Judge and presided at a hearing on the pending motions on June 28, 1994. Judge Langford decided to make no ruling on the pending motions in the Towns County case until the decision of the 11th Circuit on the appeal by DYER's TROUT FARMS is rendered.

ARGUMENT AND LEGAL AUTHORITY

I. DENIAL OF INTERVENTION AS CLAIMANT ON APPEAL VIOLATED THE TENTH AMENDMENT WHERE PETITIONER WAS ENTITLED TO A STATE COURT JURY TRIAL TO DETERMINE ISSUES OF OWNERSHIP.

A. In a Forfeiture Action, the Question of Whether a Corporation or an Individual Owns the Property is for the Jury.

A jury may find that, even where deeds name a corporation as the owner of real estate, the real owner is an individual. United States v. D.K.G. Appaloosas, Inc., 630 F.Supp. 1540 (E.D.Tex. 1986). That case shares a key feature with the one at bar: due to an unusual set of circumstances, it was the government, rather than the claimants, who sought to affirm a purported corporate ownership of real property in a forfeiture action. Id. Bruce Emery Griffin admitted that he had purchased the D.K.G. ranch with the proceeds of drug dealings. However, in a pre-plea agreement in another District, the Southern District of

Florida, the UNITED STATES had agreed not to impose any further civil sanctions on him. Id., at 1546. After the institution of the forfeiture in Texas, the Florida judge ruled that any property owned by Griffin and known to the Unites States Attorney at the time of the pre-plea agreement was protected from forfeiture. Id., at 1550. Hence, only if the corporation, D.K.G. Ranch, Inc., was the valid owner, could the property be forfeited. As a result, a Texas jury was charged to consider the question of ownership. The jury determined that the owner was Griffin and his wife. They were allowed to reclaim the ranch and the government moved to alter, amend or set aside the judgment, or in the alternative grant a new trial. The District Court held:

> "[E]ven if the verdict was contrary to the weight of the evidence, and it clearly was not, the claimants would be entitled to a judgment in their favor. This is true because even if the corporations did own legal title, the evidence supported

finding an equitable ownership interest in the Griffin's favor."

United States v. D.K.G. Appaloosas, Inc., 630 F.Supp. at 1567.

The property was protected from forfeiture even though titled to a corporation, when the facts indicated that the individuals were the true owners.

To resolve the issue of ownership of the farm, simultaneous filings in State Court and the Motion to Intervene in Federal court was appropriate. Intervention in a federal action in order that a state action proceed expeditiously was attempted in Banco Popular de Puerto Rico v. Greenblatt 964 F.2d 1227 (1st Cir. 1988). A creditors committee sued the directors of bankrupt Amfesco in New York state court while one of its members, Banco Popular, sued in the United States District Court for the District of Puerto Rico. The motion to intervene was filed, late in the proceedings,

by the committee in hopes of overturning a protective order. The appeal of that denial was denied because the motion, in that case, was filed nearly one years after the protective order was entered, by a party whose member was a party to the federal action. Banco Popular v. Greenblatt, 964 F.2d 1227 at 1229. The court also reasoned that the same materials could be made available through other channels. Id., at 1234.

That is not the case here. Petitioner will have no recourse outside of the intervention save for a separate suit, after the FARM is forfeited, under the Tucker Act. The 11th Circuit, in denying Petitioner her opportunity to intervene on appeal and the consequent stay, denied her the opportunity to assert her ownership interests before any jury, state or federal. By denying her the chance for a State determination of these issues under

Georgia law, a Tenth Amendment violation occurred. U.S.C.A. X.

B. Petitioner is Entitled to a State Jury trial on Ownership

In a drug forfeiture, the owners interest is defined by State law, rather than federal law. U.S. v. 1977 Porsche Carrera, 946 F.2d. 30 (C.A.5, Tex. 1991). The question of title and possession of real estate must be decided under state law in state court if no federal or constitutional question is involved. Lucas v. Hope, 515 f.2D 234 (5th cir. 1975) Reh.Den. 523 F.2D 1055, cert.Den. 96 S.Ct. 1464, 424 U.S. 967, 47 L.E.2D 734.

The validity of the title rests upon both the validity of the CORPORATION and validity of the deed. These are state issues. The UNITED STATES' claim, if any, must be derived from that of the CORPORATION which must be determined in state Court, under state law, and

by a jury trial. Title to land is determined by state courts. The Tenth Article im Amendment of the U.S. Constitution forbids the United States District Court to usurp this state authority.

Petitioner is entitled to a state jury trial. A prior pending federal action with the same parties, facts, and cause of action is not a bar to state action by the same plaintiff vs. The same defendant. While the trial court may chose to stay judgment until the disposition of the federal action, outright dismissal is inappropriate. Fludd v. Tiller, 184 Ga.App. 93, 360 S.E.2nd 647 (C.A.Ga. 1987). Here, the only federal question is the innocent owner defense, and that has already been decided against the corporation and assailing its validity.

C. Georgia Law Requires that the Corporate Entity be Disregarded.

The owners interest is defined by State law, rather than federal law, in a drug forfeiture. U.S. v. 1977 Porsche Carrera, 946 F.2d. 30 (C.A.5, Tex. 1991).

Georgia courts will disregard corporate fiction where corporate entity is a mere alter-ego or business conduit of an individual. It must be shown that the shareholders:

> "disregarded of the corporate entity and made it a mere instrumentality for the transaction of their own affairs; that there is such a unity of interest and ownership that the separate personality of the corporation and the owners no longer exist and [that] to adhere to the doctrine of corporate entity would promote injustice or protect fraud."

Federal Deposit Insurance Corp. v. U.S. 654 F.Supp 794 (N.D.Ga. 1986) citing Farmers Warehouse of Pelham v. Collins, 220 Ga. 141, 137 S.E.2d 619 (1964); Williams Plaza, Inc. v. Sedgefield Sportswear, Division of Blue Bell, Inc., 164 Ga.App. 720, 297 S.E.2d 342 (1982); In re Universal Profile, Inc., 6 B.R. 196, 201 (N.D.Ga. 1980); Trans-American Communications, Inc. v. Nolle, 134 Ga.App. 457, 214 S.E.2d 717

(1975). Marett v. Professional Insurance Careers, 410 S.E.2d 373, 201 Ga.App. 178.

Other factors indicating that a corporate entity is an alter ego are the commingling of an individual's property, business, or personal affairs with that of the corporation, or that of the corporation with the individuals. Stillman v. Tempo Carpets, 174 Ga.App. 66, 329 S.E.2d 197 (1985); U.S. v. Fidelity Capital Corp., 888 F.2d 1344 (11th Cir. 1991) (Georgia law requires owner abused corporate form, disregarded it, commingled assets, failed to maintain separate records).

All of these factors are found in the instant case. Whether run by PAUL DYER or WILLIAM DYER, the corporation was disregarded in the day to day running of the farm. It owned not only farm property, but the residences lived in by various family members, and their furniture. It repaired vehicles that

were driven by the family. Conversely, family members frequently made corporate purchases out of their personal funds and were later reimbursed. Meetings were no more than informal chats during family gatherings, and minutes were not kept, nor filed with the Secretary of State. Even the transfer of stock from PAUL DYER to WILLIAM DYER was not formally recorded. Davis v. Davis, 419 S.E.2d 913, 262 Ga. 420 (1991).

In effect, there was no difference between the running of the farm as a corporation running it as a family-owned proprietorship save for the filing of the $25.00 annual fee. The corporate entity was disregarded and made a mere instrumentality for the transaction of the families affairs; that there is such a unity of interest and ownership that the separate personality of the corporation and the owners no longer exist.

D. The Deed of 1978 is not Valid

A valid conveyance of land requires that the grantee must be a valid legal entity, capable of taking. A conveyance to a non-existent party is prima facie void. McCollum v. Loveless, 196 S.E.430, 432, 185 Ga. 748 (S.Ct.Ga. 1938). The question of whether a deed is valid is one for the jury and Petitioner is entitled to a jury trial on that issue. Thornton v. Parker, 68 S.E.2d 695, 208 Ga. 633 (S.Ct.Ga.1952).

The right of an heir to maintain a suit to cancel an invalid deed and restore title to land is ancient. Owens v. Oliver 97 S.E.856, 146 Ga. 675 (S.Ct.Ga. 1918); Sharp v. Autry, 188 S.E.354, 183 Ga. 282 (S.Ct.Ga. 1936); Slade v. Barber, 37 S.E.2d 143, 200 Ga.405 (S.Ct.Ga. 1946). Heirs may sue to clear title, City of Griffin v. McKneely, 115 S.E.2d 463, 101 Ga.App. 811 (Ct.App. 1960), and enjoin

disposition of the property, McGehee v. Pope, 105 S.E.2nd 26 (S.Ct.Ga. 1928). To recover, the heir must appear to be in possession of the land. McCullen v. Cooper, 125 Ga. 435, 54 S.E.97; Weyman v. Atlanta, 122 Ga. 539, 50 S.E.492.

The allegation that the petitioner is widow and sole heir to the residuary is sufficient to entitle the petitioner to maintain suit to recover real property. Williamon v. Williamon, 74 S.E.2d 71, 209 Ga.494 (S.Ct.Ga. 1953), O.C.G.A. §53-4-2. Here, Petitioner has demonstrated that she is the widow and sole heir to the residuary clause of the will.

This action is not barred by laches. Gary v. Radford, 59 S.,E.2 915, 207 Ga. 38 (S.Ct.Ga. 1950); Owens v. Oliver 97 S.E. 856. In Owens the conveyance was made by the deceased in 1906 to pay a debt, and the action was maintained

by the petitioner in 1915 when that debt had since been paid out of rents and profits. While sixteen years have passed since this deed was made, the actual FARM has always remained in the possession of Petitioner and her family. Nothing was done differently than it would have had the legal as well as equitable title passed to Petitioner upon PAUL DYER's death. To restore legal title to the rightful owner, Petitioner, at the expense of the fictive CORPORATION, even at this late date, will not prejudice the rights of anyone.

E. The FARM Remained in the Residuary of the Estate

In the Opinion of the District Court, WILLIAM DYER's "total control" was used to reach through the corporation and allow the UNITED STATES to forfeit the land, as though it belonged to WILLIAM DYER. But it never did. WILLIAM DYER never held title to the FARM. The

FARM belonged to his late father, PAUL DYER, since 1938, and was deeded to the CORPORATION in 1978. That conveyance was invalid.

The FARM remained part the residuary of the estate of PAUL DYER. Upon the death of an owner of an estate in realty which estate survives him, title vests immediately in the heirs. Slade v. Barber, 37 S.E.2d 143, 200 Ga.405 (S.Ct.Ga. 1946). Realty descends directly to one's heirs, subject to being administered by legal representative for the purpose of paying debts. Warren v. Federal Land Bank of Columbia. 157 Ga. 464, 468, 122 S.E.40, 33 A.L.R. 45 (S.Ct.Ga. 1923.

As the sole heir to the residuary, Petitioner is the beneficiary of the farm. There is no justification for a determination that the FARM itself passed to WILLIAM DYER upon the death of PAUL DYER.

The legacy of stock to WILLIAM DYER does not equate with a legacy of the FARM. The transfer of stock in an a fictive CORPORATION to WILLIAM DYER in 1981 is a void legacy, O.C.G.A. §53-2-104. Even where a renunciation by a legatee resulted in unexpected assets in the residuary, the transfer of corporate stock under the residuary clause was held to be testamentary. Brown v. Momar, Inc., 411 S.E.2d 718, 201 Ga.App. 542 (Ga.App. 1991), O.C.G.A. §53-2-115(a). Here, where the invalidity of the corporation makes the deed to that corporation invalid, the land remained in the residuary. Remaining in the residuary, the ownership of the farm vested in Petitioner upon her husband's death in 1981 and she is entitled to standing to contest the forfeiture as an innocent owner. 21 U.S.C. § 881 (a)(7).

II. DENIAL OF INTERVENTION DEPRIVED PETITIONER OF DUE PROCESS BECAUSE SHE HAD NO PRIOR NOTICE OF HER OWN STANDING TO CONTEST THE FORFEITURE AND ANY NOTICE OF THE FORFEITURE ITSELF WAS MEANINGLESS

A. Due Process Requires that Petitioner Be Apprised of Her Standing to Contest the Forfeiture.

For a forfeiture to comply with the requirements of due process, notice must be reasonably calculated to apprise interested parties of the pendency of the action. Robinson v. Hanrahan, 409 U.S. 38, 34 L.Ed.2d 47, 93 S.Ct. 30 (1972); U.S. v. James Daniel Good Real Property, et.al., 62 L.W. 4013 (October 6, 1993). It is now well established that "the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" U.S. v. Premises, Real Property and Acreage, 831 F.Supp. 66 (N.D.N.Y. 1993) quoting Fuentes v. Shevin 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972), (quoting, Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965).

Petitioner does not maintain that she did not know that a forfeiture action was pending. However, she was completely unaware that her status as widow and sole beneficiary to PAUL DYER's estate gave her standing to contest the forfeiture. Petitioner believed that her interests were being protected by the CORPORATION, which lacked the separate identity to do so. Banco Popular de Puerto Rico v. Greenblatt 964 F.2d 1227.

The UNITED STATES, however, was well aware of the defects in the CORPORATION through which it now asserts its interest in the property. In fact, the UNITED STATES exploited those very defects to litigate its forfeiture of the property, and was fully cognizant that the United States District Court vigorously assailed the validity of the CORPORATION. The UNITED STATES, through its forfeiture action, seeks to seize the property rights of the

CORPORATION. But, by the very nature of its pleadings against the CORPORATION's innocent owner defense, it has acknowledged the invalidity of the CORPORATION. However, at no time did the UNITED STATES inform Petitioner that should the CORPORATION be found to be invalid, she could assert her claim individually.

In it's opposition to her motion to intervene, the government asserted that Petitioner lacked standing because she failed to file a timely claim and answer. However, the Circuit Court had jurisdiction despite Petitioner's lack of statutory standing because she had Article III standing, "which requires the claimant to demonstrate a sufficient interest in the property to create a 'case or controversy' in the constitutional sense." U.S. v. Property at 4492 S. Livonia Rd., Livonia, 889 F.2d 1258 (2nd Cir. 1989, citing

United states v. $38,000.00 in United States Currency, 816 F.2d 1538, 1543 (11th Cir. 1987). Petitioner made a sufficient showing of interest in the property through filing of her Motion to Intervene and Motion to Stay Enforcement, with accompanying briefs and a claim and answer, that her technical non-compliance with the procedural rules should have been excused.

Petitioner did not assert a claim during the initial forfeiture proceedings because she was unaware that she had a claim prior to the time the validity of the CORPORATION was assailed by the opinion of the DISTRICT COURT on January 18, 1994, discussed by her and attorney on February 22, 1994. Her Motion to Intervene was filed with all haste, on March 3, 1994.

Because of the short delay, which the UNITED STATES claims to be untimely, it wishes

to snuff out GRANNY SUSIE's fifty years' ownership on a procedural technicality. This would be an outrageous abuse of a lone citizen's rights. To hold an eighty year old woman, lacking a formal education, and naive in the law, to standards that would challenge even the most learned of counsel, is a miscarriage of justice. This is a perfect illustration of the truth of Seneca's observation: "the more numerous the laws, the more oppressive the state."

B. Merits of Intervention

The right to post-judgment intervention is well established. United Airlines, Inc. v. McDonald, 97 S.Ct. 2464, 432 U.S. 385, 53 L.E.2d 423 (1977), reh den. 98 S.Ct. 623, 434 U.S. 989, 54 L.E.2d 485, cert. den. 99 S.Ct. 2869, 442 U.S.934, 61 L.E.2d 303, reh.den. 100 S.Ct. 196, 444 U.S. 890, 62 L.E.2d 127. (1977).

The facts of this case make that strong showing, and there is no tendency to prejudice the other parties. F.R.C.P. 24 (a)(2) demands intervention when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposing of the action may as a procedural matter impair or impede the applicants ability to protect that interest, unless that applicant's interest is adequately protected by the existing parties. F.R.C.P. 24 (a)(2). Jurisdiction passes to the Court of Appeals once a notice of appeal is filed. Miller v. United States, 114 F.2d 267, 269 (7th Cir. 1940), cert. denied 313 U.S. 591, 61 S.Ct. 1114, 85 L.Ed.1545 (1941).

Like McDonald, Petitioner has learned only during appellate proceedings that her rights were not being protected by existing parties.

of possible prejudice to petitioner and other petitioners similarly situated" that the facts require intervention. Hurd v. Illinois Bell Telephone co. 234 F.2d 942 (7th Cir. 1956).

C. Applicable Factors

Petitioner asks this Court to apply the four-part test in the 11th Circuit for non-statutory intervention of right: 1) timeliness; (2) a sufficient interest; (3) impairment of that interest absent intervention; and (4) inadequate representation by the parties. Resort Timeshare Resales, Inc. v. Stuart 764 F.Supp. 1495 (S.D.Fla. 1991). The standard is more lenient under 24(a) than 24 (b), Resort v. Stuart, 764 F.Supp. at 1497. See also, Nevilles v. E.E.O.C. 511 F.2d. 303, 305 (C.A.Mo. 1975).

1. Timeliness

> "There is no bright-line rule delineating when a motion to intervene is or is not timeous. Instead, courts must decide the question on a case by case basis,

United States v. Jefferson County, 720 F.2d 1511 (11th Cir. 1983). She had believed that the CORPORATION, DYER'S TROUT FARMS, INC., was a valid entity, separate from its shareholders which would hold and maintain the FARM that was her families heritage through the passing of time for many generations to come. Unfortunately, Petitioner has recently learned that that is not the case.

Petitioner, as widow and sole heir to the residuary of the estate, and matriarch of the DYER family, must be allowed to intervene to protect the rights of her family. She, not the fictive CORPORATION, is the appropriate party to protect these rights against the pending forfeiture of the family homestead by the UNITED STATES. The CORPORATION is incapable of protecting those rights, as it is not even a valid separate entity. To proceed without Petitioner would be "so fraught with elements

examining the totality of the relevant circumstances."

Banco Popular de Puerto Rico v. Greenblatt 964 F.2d 1227 at 1230 (1st Cir. 1992)

Timeliness is determined from all the circumstances: the period of time during which the intervenor knew or reasonably should have known of his interest; prejudice to existing parties resulting from failure to move promptly; prejudice to would-be intervenor if his motion is denied; and unusual circumstances. Resort v. Stuart, supra., at 1496-7. Delay alone is insufficient to mandate denial of intervention of right. Meyer v. Macmillan Publishing Co., Inc. 85 F.R.D, 149, 150 (D.C.N.Y. 1980).

Mere knowledge of the pendency of an action without appreciation of potential adverse effect adjudication of that action might have on ones interest does not preclude

intervention. U.S. v. Jefferson City, 720 F.2d 1511, reh.den. 724 F.2d 978.

> "While knowledge of the existence of litigation, simpliciter, does not invariably trigger one' obligation to seek intervention, the count begins no later than the time 'when intervenor became aware that its interest in the case would not longer be adequately protected by the [existing] parties.'"

Banco Popular de Puerto Rico v. Greenblatt 964 F.2d 1227 at 1231, quoting, Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 785 (1st Cir. 1988).

The reason for the delay is that Petitioner was unaware of her interest until February 22, 1994. Petitioner moved promptly to intervene once she learned that her interests could not be protected by the invalid corporation, and her motion was not untimely.

To delay the proceedings long enough to allow Petitioner to obtain her rightful state law determination, in state court, will prejudice nobody, least the UNITED STATES. In

the event that she does not prevail, the UNITED STATES can proceed in this action with a clear determination that the CORPORATION is a valid, separate entity. Continuation of this proceeding without the intervention by Petitioner, will prejudice all parties, including the UNITED STATES. In the event that the UNITED STATES prevails in this action, and Petitioner prevails in State Court, the UNITED STATES could be liable to her for any damage to the property while it was held by the UNITED STATES.

The proceedings have gone so far as to assail the validity of the CORPORATION. The CORPORATION will not be prejudiced by having the issues of its validity, the validity of the 1978 deed, and the ownership of the FARM determined in State Court.

Should this action proceed without the intervention by Petitioner, she will be

prejudiced and will lose the FARM which comprised the estate and life's work of her late husband, PAUL DYER. Once she loses the actual possession of the FARM, it will be extremely difficult to protect her own and her family's rights.

The circumstances of this action are exceptional. The innocent owner defense has been denied to a corporation in the 2nd Circuit. United States v. 141st Street Corporation, 911 F.2d 870 (2nd Cir. 1990) But in that case, the property in question was bought by the corporation while in control of the wrongdoer, who was well aware of the drug dealing that pervaded the building. If the corporation were found to be invalid, the property would be owned by the wrongdoer himself. Here, the property was granted to

the corporation by an innocent owner, PAUL DYER, without consideration and without knowledge owner that the corporate form was assailable. A deed from a person to a fictive corporation which he owns and controls is no more than a deed to oneself and is not valid.

2. Sufficiency of Interest

Petitioner, as widow and sole heir to the residuary of the estate of PAUL DYER holds equitable title to the FARM currently titled to DYER'S TROUT FARMS, INC. The instant case is a forfeiture action instituted by the UNITED STATES against this property, for the purported growing of marijuana on a small portion of the land.

Her interest lies both as widow and heir, and as the matriarch of an extended family including six children, nine grandchildren, and great-grandchildren. This FARM is their heritage, their homeland, and their rightful

property. It will be lost, not only to Petitioner, but to all future generations of her offspring, if this forfeiture action proceeds in her absence. U.S. Const Art. 3, Sec. 3, Cl. 3.

Petitioner has an interest in this action within the meaning of Rule 24(a)(2). Sanguine v. U.S. Interior, 736 F.2d at 1420.

3. Impairment of Interest

The loss of her family farm, the estate she intends to leave to her grandchildren is no less than the loss of her family's heritage, homeland and rightful property. If Petitioner is not permitted to intervene, the fate of all that she and her husband worked for will be left in the hands of a fictive CORPORATION.

4. Inadequacy of Representation

The burden of showing inadequate representation is minimal. Sanguine, Ltd. v. U.S. Interior, 736 F.2d at 1419. [Citations

Omitted]. Petitioner cannot rely on the fictive corporation, DYER'S TROUT FARMS, INC., to protect her interest. The CORPORATION seeks to hold title to the FARM itself. It has demonstrated an inability to protect even its own title by the Opinion of Judge William C. O'Kelley of January 18, 1994.

III. DENIAL OF THE INNOCENT OWNER DEFENSE ASSAILED THE VALIDITY OF THE CORPORATION

The innocent owner test in § 881(a)(7) standard for determining innocent ownership varies amongst the Circuits. Some require a claimant to demonstrate either a lack of knowledge or a lack of consent, while the other school of thought applies a conjunctive test. U.S. v. One Parcel of Real Estate 831 F.Supp. 1578, at 1583 (S.D.Fla. 1993). Here, no allegation has been made that Petitioner either knew or consented to the use of the property for illegal purposes. The knowledge of the

CORPORATION, however, is the issue now under appeal in the 11th Circuit. Petitioner maintains that the denial of the innocent owner defense is tantamount to a declaration that the corporation is not a valid separate entity.

> "When any corporation owns property, the ownership of such property cannot be attributed to the shareholders individually without assailing the validity of the corporation directly."

In re Davis, 16 B.R. 553, 554 (U.S.Bank.Ct., S.D.Fla. 1981). Here, the District Court has melded the identities of the CORPORATION and WILLIAM DYER, and pierced the corporate veil in spirit if not in words.

As a viable corporation, the CORPORATION would have been entitled to an "innocent owner" defense under Georgia law because under Georgia law, principles of agency apply to corporations and their officers. Gift Collection Ltd., v. Small Business Administration, 738 F.Supp. 487 (N.D.Ga. 1989). A corporation and its

shareholders and officers are separate, even if one person owns all of its shares and controls its actions. U.S. v. Fidelity Capital Corp, 920 F.2d 827 (11th Cir. 1991). The corporation is not bound by the acts of the owner as an individual and the owner is not bound by corporate acts, even though the individual may dictate every corporate decision. Fidelity, 920 F.2d at 830. A person may own all of the stock in a corporation and the shareholder and the corporation would, in law, remain two separate and distinct persons. Jenkins v Judith Sales Int'l, Inc., 332 S.E.2d 687, 175 Ga.App. 171 (1984),

Had these principles of Georgia agency law been applied, the innocence of the CORPORATION would depend on whether the marijuana was alleged to have been grown by WILLIAM DYER as an individual, or as an agent of the CORPORATION. Such an analysis would demand

that the innocent owner defense apply, as clearly illegal marijuana manufacture is ultra vires.

Instead, the denial of the innocent owner defense was based on the extent of control of the corporation by WILLIAM DYER, citing many of the factors normally used to disregard the corporate entity:

> "[William Dyer's] control over the claimant corporation is nearly absolute. He holds his office indefinitely and is the only officer who knows the corporation's finances. William exclusively controlled the use of his residence and the corporate property upon which it is located. In light of Williams' near total control over the claimant corporation, his knowledge is imputed to the corporation and the corporation is therefore not an innocent owner."

Opinion, Hon. William C. O'Kelley, January 18, 1994 [Emphasis added]

This case was compared to those of other corporate owners on the basis, not of principles of agency law, but upon the quantity

of corporate stock owned by the alleged wrongdoer. Compare United States v. One Parcel of Land, 965 F.2d 311 (7th Cir. 1992), (1/3 ownership by wrongdoer) and United States v. 4657 Acres in Martin County, 730 F.Supp. 423 (S.D.Fla. 1989) (.31% shareholder, not an agent) with United States v. 141st Street Corporation, 911 F.2d 870 (president and principal stockholder). The decision as to the innocence of this corporation appears to be determined, not by agency or traditional concepts of veil piercing but by a new hybrid: whether the wrongdoer owned or controlled enough stock to justify seizing the corporations assets as though they were the individual's. Jenkins v. Judith Sales, 332 S.E.2d 687 (Corporate fiction will be disregarded where a party has overextended his privilege in use of the corporate entity in order to defeat justice, perpetrate fraud or evade a contract or tort

responsibility); Kelly v. Austell Building Supply, 297 S.E.2d 292, 164 Ga.App. 322 (1982).

A closer look at the forfeiture cases involving corporate ownership, however, that they were determined based on traditional agency principles, not on the extent of control and ownership. In U.S. v. 4.657 Acres, the .31% shareholder landed a plane in a drug transaction on the defendant property. The court held:

> "[I]t is arguable that John G. Tucker, Jr. was acting within the scope of his employment when he allowed the plane to land on the Defendant property, it is undisputed that John G. Tucker, Jr. was not acting to benefit G.H. Tucker, Inc. when he permitted illegal activity to take place on the business property, since G.H. Tucker, Inc. had nothing to gain by the narcotics transaction. Therefore, this Court finds that John G. Tucker's knowledge and consent to the illegal activity cannot be imputed to G.H. Tucker, Inc.

United States v. 4657 Acres in Martin County, 730 F.Supp. at 427. In U.S. v. One Parcel of Land 965 F.2d at 311, the wrongdoer was, like

WILLIAM DYER, a one-third owner of the corporation. Harry R. Seymer, III was the son of the remaining stockholders. In U.S. v One Parcel, Harry's knowledge was not imputed to the corporation.

> "As a legal fiction, a corporation cannot 'know' like an individual 'knows.' We treat corporations as separate legal entities and enable them to own property and enter contracts by relying on agency precepts. A corporation and its agents relate to one another like a principal to its agents. A corporation acts through its agents. Similarly, a corporation 'knows through its agents. . . . However, where an agent obtains knowledge while acting outside the scope of his agency, the standard resumption is unfounded, and the court will not impute the agent's knowledge to the corporation."

Id., citing W. Fletcher, 3 Corporations §§ 790, 793 (1986).

> "In any event, the knowledge that a corporate agent acquires while not acting at least in part with the intent to benefit the corporation is not imputed to the corporation."

Id., at 317.

In the instant case of a family estate held by a corporation, denial of the innocent

owner defense is tantamount to veil piercing and should be treated as such. By denying the innocence of the corporation, the District Court has found a unity of interest and ownership, and that separate personalities no longer exist. In short, the CORPORATION can be innocent and an owner or neither, but it cannot be one without the other.

IV. FORFEITURE VIOLATES U.S. CONSTITUTION ART. 3, SEC. 3.

Asset forfeiture is an unconstitutional violation of U.S.C.A. Art. 3, Sec. 3 when the UNITED STATES seizes a farm that was intended to be passed down to subsequent generations. As the matriarch of her large extended family, she has standing to assert the rights of the nine grandchildren who are the heirs of PAUL DYER.

Abuses of the bill of attainder by the English monarchy led the Framers of our Constitution to limit the application of criminal forfeiture. Thus Article III. Section 3 prohibits forfeiture as a penalty for treason except during the life of the person attained. In 1790, the First Congress extended that prohibition by eliminating forfeiture of one' estate and corruption of blood as penalties for all felonies. Act of April 30, 1790, Ch.9, 24, 1 Statutes at Large. cited in U.S. v. Saccoccia 823 F.Supp. 994 (D.R.I. 1993).

Forfeiture, even for the crime of treason, was not to be implemented such that one's heirs would be deprived of their inheritance. The facts of Saccoccia did not mandate the denial of forfeiture since the assets were not realty, but cash proceeds. In this case however, the UNITED STATES has seized the family homestead of an extended family. It was

intended that it be inherited, by not only the generation including the alleged wrongdoer but the next -- Petitioner's grandchildren. Moreover, the alleged wrongdoer never held title to the property.

Forfeiture in this case should be denied as an unconstitutional violation of Art. 3, Section 3 of the U.S. Constitution.

REASONS FOR GRANTING CERTIORARI

Petitioner is a life-long resident of Towns County and the State of Georgia. She hopes that her rights to keep the land left to her by her late husband will be protected by the State of which she has always been a proud citizen. GRANNY SUSIE asks that the State of Georgia be allowed to assert its own rights and not be deprived by the UNITED STATES of the right to make the state law determination to which Petitioner is entitled.

The due process rights of Petitioner were violated when she was denied the opportunity to intervene on appeal so that she might obtain a valid state court determination of her property rights. Petitioner had no notice that she had standing to contest the forfeiture until the validity of the CORPORATION was assailed by the Order of the District Court on January 18, 1994 and she had a chance to

discuss this with an attorney. Under these exceptional circumstances, a motion to intervene should have been granted and Certiorari is the appropriate remedy.

Dated this 30 day of July, 1994.

Mrs Susie Dyer

Mrs. Susie Dyer
Pro Se

Route 2, Box 472
Hiawassee, GA 30546
706-896-3069

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION FOR CERTIORARI, was mailed, first class, postage prepaid, this 30 day of July, 1997 to:

Janice Treu
Assistant U.S. Attorney
75 Spring Street
Suite 1800
Atlanta, Georgia 30303

John R. Martin
44 Broad Street, N.W.
500 Grant Building
Atlanta, GA 30303

Douglas McDonald
P.O. Box 396
22 Clarksville Highway
Cornelia, GA 30531

Nancy Lord
1718 Peachtree St., N.E.
Suite 499
Atlanta, Georgia 30309

Respectfully submitted,

Mrs Susie Dyer

Mrs. Susie Dyer
Pro Se

Route 2, Box 472
Hiawassee, GA 30546
706-896-3069

706-896-3069

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA,	)
	)
vs.	)
	)
CIVIL NO. 2:92-CV-199-WCO	)
136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT, 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA,	)
TITLED IN THE NAME OF: DYERS TROUT FARMS, INC.	)
Defendant.	)

ORDER

The captioned case is before the court on motions by claimant Dyer's trout Farms to extend time for discovery [32-1]; to stay proceedings [37-1]; and for summary judgment [41-1]. There are also motions before the court by the plaintiff United States to compel responses to discovery [33-1]; to extend time to file a pretrial order [38-2]; and for

summary judgment [38-1].

Factual Background

The United sTates filed a civil complaint for forfeiture of the defendant property on October 20, 1992 and an amended complaint amending the caption of the action and legal description of the property on April 21, 1993. This is a civil proceeding in rem in which seeks an order declaring the defendant property forfeited to the United States. The United States contends that the defendant real property was used to facilitate illegal drug trafficking, in violation of Title 21 U.S.C. and, therefore, the property is subject to forfeiture to the plaintiff pursuant to 21 U.S.C. § 881(a)(7).

On September 10, 1991, agents of the Georgia Bureau of Investigation and the Governor's Task Force for the Eradication of

Marijuana discovered a number of marijuana plants growing on the defendant real property near the residence of William Dyer. The government alleges that there were approximately 108 marijuana plants growing on the defendant real property. Approximately 10 of the plants were growing adjacent to William Dyer's residence and 3 of the plants were growing approximately 1/4 mile from William Dyer's residence.[1]

William Dyer and the claimant contend that Dyer knew about the 5 plants next to his home but did not know about any more plants

---

[1]. During the search of William Dyer's residence and outbuildings, law enforcement officers discovered several marijuana cigarettes, large amounts of potting soil and fertilizer, peat/styrofoam cups ("starter cups") and green mesh chicken wire of the same distinctive type as that found surrounding the larger plot of 95 marijuana plants. The peat/styrofoam "starter cups" discovered at William Dyer's residence were the same shape as the bottom of the 95 marijuana plants as they were pulled out of the ground by officers.

elsewhere on the property. On June 22, 1992 William Dyer was convicted of possession of marijuana in a non-jury stipulated trial in Towns County Superior Court.

The defendant real property is comprised of a single tract of land being 136 acres more of less. Legal title to the defendant real property is held by Dyer's Trout Farms Inc. The sole officers of Dyer's Trout Farms Inc. are William Dyer, President, and Willard Dyer, Secretary. William Dyer owns 68% of the stock of Dyer's Trout Farms, Inc. All employees of Dyer's Trout Farms report directly to William Dyer.

Claimant Dyer's Trout Farms defends this action of the basis of an "innocent owner" defense. Claimant contends that any felony violation of Title 21 U.SC. on the defendant property was "committed or omitted without the knowledge or consent of th[e] owner." 21

U.S.C. § 881(a)(7). Claimant also argues that forfeiture of the entire defendant property, approximately 136 acres, is disproportionate to the seriousness of any felony violation committed on the defendant property and would therefore be violative of the protection of the Eight Amendment to the United States constitution against excessive fines.

Legal Analysis

I. Motion to Extend Time by Dyer's Trout Farms and Motion to Compel Discovery by United States

A. Motion to Extend Time

On June 28, 1993, claimant Dyer's Trout Farms requested an extension of discovery by one month. Claimant contend that they hoped for settlement and, thus, did not file all their discovery requests sooner. The hope for settlement does not excuse the failure to serve discovery request within a reasonable time

prior to the end of discovery. The court is unaware whether the parties proceeded with discovery. If discovery proceeded past June 28, 1993, then the motion is granted nunc pro tunc.

If claimant Dyer's Trout Farm [sic] still plans to continue discovery, any further extension of time is denied. Local Rule 225-1(a) states that "Discovery proceedings shall be initiated promptly so that discovery may be initiated and completed within the period designated in the discovery track to which the case is assigned. . . ." (emphasis added) LR 225-1(a). On Friday, June 25, 1993, only one business day prior to the close of discovery, the government received claimant Dyer's Trout Farms first set of interrogatories to plaintiff United States and claimant Dyer's Trout Farms first request for production of documents. Claimant had ample time and opportunity during

the four month discovery period to conduct and complete discover and should not have waited until the end of the period to file these discovery requests.

B. Motion to Compel Discovery

The United States moves the court to compel claimant Dyer's Trout Farms to respond to plaintiff's First Request for Production of Documents. Federal Rules of Civil Procedure 37(a)(2) provides in part "[i]f a party in response to a request for inspection under Rule 34 fails to respond . . . the discovering party may move for an order compelling an answer . . ." The claimant has not objected to the discovery requests. Claimant did request a thirty day extension for discovery which is addressed in this order. If Claimant has not already provided the information requested in plaintiff's First Request for Production of Documents, claimant is hereby ordered to do so.

THe information which claimant is hereby ordered to do so. The information which claimant must produce includes claimant's corporate income tax information for the previous five years and all written records memorializing the meetings held by claimant's officers and shareholders during the year of and the year preceding the discovery of marijuana growing on the defendant property which gave rise to this forfeiture action.

II. Motion to Stay Proceedings by Dyer's Trout Farms

The claimant moves the court to stay all further proceedings until such time that William Dyer, the president and majority shareholder of the claimant is no longer in jeopardy of federal prosecution. THis request would mean that the court stay the proceedings until September 9, 1996. Claimant contends that a stay should be granted because it is being

denied important testimony in support of its innocent owner defense by William Dyer, due to Dyer's choice to assert his Fifth Amendment privilege during his deposition and his intention to assert that privilege at trial if the case proceeds.

William Dyer has been prosecuted by state authorities based upon the evidence of cultivation of marijuana on the defendant property. Although William Dyer is still in jeopardy of a federal prosecution for this incident, there is no parallel criminal proceeding in the captioned case, and the claimant readily admits that there has been no indication by the United STates that it intends to prosecute William Dyer. Such a prosecution might even violate the internal policies of the Justice Department. However, the United STates will not make a formal decision not to prosecute Dyer and will not grant Dyer immunity

under 18 u.S.C. § 6001 et. seq.

The claimant itself, by virtue of the fact that it is a corporation and does not have Fifth Amendment privilege to assert, is not being placed in a position where it will be penalized by an assertion of the privilege. However, claimant contends that it is unfairly handicapped in defending this lawsuit because an employee of the corporation, who may have been involved in criminal actions on property owned by the corporation which were outside the scope of his employment with the corporation and not for the benefit of the corporation, has chosen to claim his Fifth Amendment privilege.

The choice between presenting a defense or remaining silent is not a form of unconstitutional compulsion in the civil setting. United States v. Rylander, 460 U.S. 750, 758-759 (1983). See also Williams v. Florida, 399 U.S. 78, 84-85 (1970) (pressure to testify does

not amount to compulsion). A claimant in a forfeiture action is not penalized for exercising his or her Fifth Amendment privilege rather forfeiture is the consequence of the claimant's failure to prove his or her case. Although silence in the fact of the government's probable cause showing may not be the claimant's strongest case, the Fifth Amendment privilege does not protect a litigant from making difficult choices. United States v. White, 589 F.2d 1283, 1286-87 (5th Cir. 1979) (requiring defendant to go to trial in a civil case while criminal charges arising from the same conduct were pending did not unconstitutionally force the defendant to choose between preserving his Fifth Amendment privilege and losing the civil suit, where there was no indication that invocation of the Fifth Amendment would have necessarily resulted

in adverse civil judgment).[2]

The Constitution does not require a stay of proceedings when Fifth Amendment concerns disadvantage a party to a civil suit. A stay is mandated only when the invocation of the privilege leads directly to an adverse judgment, including a summary judgment. United States v. Premises Located at Route 13, 913 F.2d 749, 756 (11th Cir. 1991). When the invocation of the Fifth Amendment privilege does not directly in an adverse judgment, the decision to grant or not to grant a stay is case-specific. Wehling v. Columbia Broadcasting System, 608 F.2d 1084, 1089 (5th Cir. 1979). The Constitution does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings.

---

[2]. In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as precedent all of the opinions of the former Fifth Circuit decided prior to October 1, 1981.

S.E.C. V. Dresser Industries, 628 F.2d 1368, 1375 (D.C. Cir. 1980). Claimant's motion to stay the proceedings is hereby DENIED.

III. Motions for Summary Judgment and motion to Extend Time to File Pretrial Order by United States

A. Summary Judgment

The case is also before the court on both the plaintiff's and the claimant's motions for summary judgment. In a forfeiture action, the burden is on the United States to establish probable cause for the belief that a substantial connection exists between the property to be forfeited and an illegal drug transaction. United States v. $4,255,625.39, 762 F.2d 895, 903 (11th Cir. 1985), cert. denied, 474 U.S. 1056 (1986). both sides agree in their statement of materia facts that the government has established probable cause. Once the government establishes probable cause, the burden of proof shifts to the claimant to

show, by preponderance of the evidence that the real property is not subject to forfeiture. Id. at 904; United states v. A Single Family Residence, 803 F.2d 625, 629 (11th Cir. 1986). Claimant is attempting to meet this burden by showing that it is an innocent owner who did not know of the property's connection with drug sales. single Family Residence, 803 F.2d at 629. The government's burden of probable cause is met and the issue to be decided is whether the claimant is an innocent owner.

Summary judgment is only proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Where supporting or opposing affidavits are used, the

> affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

Fed. R. Civ. P. 56(3). Because the procedure deprives the parties of a trial on the issues, the court must be careful to ensure that only those claims for which there is no need for a factual determination as to any materia fact are disposed of by summary judgment . Celotex corp. v. Catrett, 477 U.S. 317 (1986).

In addition, a court evaluating a summary judgment motion must view the evidence in the light most favorable to the non-movant. Samples v. City of Atlanta, 846 F.2d 1328, 1330 (11th Cir. 1988): Tippens v. Celotex Corp., 805 F.2d 949, 953 (11th Cir. 1986), reh'g denied, 815 F.,2d 66 (11th Cir. 1987). To survive a

motion for summary judgment, the non-moving party need only present evidence from which the trier of fact might return a verdict in his favor. Samples, 846 F.2d at 1330. However, Rule 56, "[b]y its very terms, . . . provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-8 (1986)(emphasis in original). The materiality of facts is government by the substantive law. Id. at 248. A dispute is genuine if the evidence is such that the factual issues "may reasonably be resolved in favor of either party." Id. at 250.

Consideration of a summary judgment motion does not lessen the burden on the non-moving party: the non-moving party still bears the

burden of coming for the with sufficient evidence on each element that must be proved. Earley v. Champion Int'l Corp., 907 F.2d 1077, 1080 (11th Cir. 1990)(emphasis in original); see Celotex, 477 U.S. at 322-23. "If on any part of the prima facie case there would be insufficient evidence to require submission of the case to the jury, [the court] must . . . grant . . . summary judgment for the defendant." Earley, 907 F.2d at 1080 (citations omitted). In Earley the Eleventh Circuit further emphasized:

> The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. . . . Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case. . .. In such circumstances, there can be no genuine issue of materia fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. . . . If evidence is merely colorable, or is not significantly

> probative, summary judgment may be granted.

id. (emphasis in original) (citations omitted).

In ruling on a motion for summary judgment, a court must evaluate the evidence in light of the proper standard of proof. In an innocent owner defense the claimant bears the ultimate burden of proving lack of knowledge or consent to the illegal activity. United States v. One Parcel Of Real Estate, 963 f.2d 1496, 1503 (11th Cir. 1992). Failure to rebut a showing of probable cause to believe the defendant property was used or intended to be used to facilitate a violation of Title 21 U.S.C. is sufficient by itself to warrant forfeiture. U.S. v. Little Al, 712 F.2d 133, 136 (5th Cir. 1983). The government as clearly established probable cause that the defendant real property was used to facilitate the manufacture of marijuana. The court will not turn to an examination of claimant's arguments

to see if innocent ownership can be established.

For purposes of the governments' motion for summary judgment the court accepts the following facts as true. Dyer's Trout Farms, Inc. is engaged exclusively in the business of raising and selling fish and livestock. the entire income of the corporation is derived from the sale of fish and livestock. The corporation has received no income or benefit from the cultivation of marijuana. Neither Willard or Willis Dyer was aware of or consented to the cultivation of marijuana on the corporate property.

Although William Dyer is President and majority shareholder of Dyer's Trout Farms, claimant argues that his personal knowledge and involvement cannot be attributed to the corporation. Claimant relies on a Seventh Circuit case in which a corporation was owned

by three family members in equal one-third shares. United States v. One Parcel of Land, 965 F.2d 311 (7th Cir. 1992). The one family member who conducted the day to day operations of the property engaged in felony drug violations without the knowledge and consent of the other stockholders. the Seventh Circuit entered summary judgement on behalf of the corporation as an innocent owner.

This case while similar is also remarkable different in one crucial aspect. The criminal defendant in the one parcel case owned 33 and 1/3 percent of the property. William Dyer in this case owned 68% of the property. This court will not establish a particular number of shares of stock at which knowledge will be imputed from an individual to a corporation. Other factors may increase or decrease the relevance of a percentage of stock shares. However, in this case a defendant who has 685

of the corporation's shares and controlling authority of the daily activities of a family owned corporation is found to provide that corporation with knowledge of his activities. See Unites States v. 141st Street Corporation, 911 F.2d 870 (2d Cir. 1990)(the corporation's president and principal stockholder knew of narcotics activity in the building and, thus, the entire building was forfeited); United States v. 4687 Acres in Marin County, 730 F.Supp. 423 (S.D. Fla. 1989 (the participation of a .31% shareholder and agent of the company in a crime did not constitute knowledge chargeable to the corporation). The court in 4657 Acres emphasized that the controlling Board of Directors and majority shareholders had no knowledge of the illegal activity. In this case, the president and majority shareholder did have knowledge of the illegal activity.

William Dyer, the majority shareholder and president of the corporation knew he was growing marijuana on property titled to the corporation. His control over the claimant corporation is nearly absolute. He holds his office indefinitely and is the only officer who knows the corporation's finances. William exclusively controlled the use of his residence and the corporate property upon which it is located. In light of Williams' near total control over the claimant corporation, his knowledge is imputed to the corporation and the corporation is, therefore, not an innocent owner. thus, the government's motion for summary judgement is hereby granted and the property is forfeited to the united States. The claimant's motion for summary judgment is denied.

B. Eighth Amendment

This order of the court grants summary judgment to the plaintiff and allows forfeiture of the defendant property. Thus, the court now finds it necessary to address claimant's argument that forfeiture is disproportionate to the seriousness of the felony and, therefore, violates the Eight Amendment protections against excessive fines. Austin v. United States, 113 S.Ct. 2801, 2812 (1993). Claimant contends that the 136 acres of real estate is worth at least one million dollars. Plaintiff argues that the defendant property is worth approximately $490,000. For purposes of this motion, the court will assume the property is worth one million dollars.

In Solem v. Helm, 463 U.S. 277 (1983) the Supreme Court established three relevant factors to consider when determining if a punishment is disproportionate under the Eighth Amendment. These factors are: (1) the gravity

of the offense; (2) the sentence imposed on other criminals in the same jurisdiction; and (3) the sentence imposed for the same crime in other jurisdictions. Solem, 463 U.S. at 290-292. The Eleventh Circuit in McCullough v. Singletary, 967 F.2d 530 (11th Cir. 1992) analyzed the Solem test for disproportionality in light of the Supreme Court's decision in Harmelin v. Michigan, 111 S.Ct. 2680 (1991).[3] The Eleventh Circuit agreed with the Fifth Circuit and found that after analyzing the first fact of Solem, if a determination is made that sentence was grossly disproportionate to the offense then the court should consider the remaining Solem factors. 967 F.2d at 535 (citing McGruder v. Puckett, 954 F.2d 313 (5th

---

[3]. In Harmelin, Justice Kennedy stated that the second and third Solem factors, intra and inter-jurisdictional analyses, are appropriate only in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.

Cir. 1992).

The Supreme Court has consistently upheld the validity of harsh criminal penalties for drug cases. See Harmelin v. Michigan, 111 S.Ct. 2680 (1991); Hutto v. Davis 454 U.S. 370 (1982). The Supreme Curt has also noted that drug use and distribution is one of the "greatest problems affecting the health and welfare of our population." National Treasury Employees Union V. Von Raab, 489 U.S. 656, 668 (1989). Defendant property was used to cultivate a controlled substance, marijuana. The gravity of the offense in this case brings the forfeiture of the defendant property within the constitutional boundaries.

Harsh punishments for drug offenses have been upheld in all jurisdictions. Federal law authorizes a sentence of up to forty years and a fine of 2 million dollars, if the defendant is an individual, for the manufacture of 100

or more marijuana plants. 21 U.S.C. § 841. See United States v. Solomon, 848 F.2d 156 (11th Cir. 1988) (mandatory minimum five year sentence for possession with intent to distribute 5 grams of cocaine not disproportionate because it was within statutory limits); United States v. SMith, 966 F.2d 1045 (6th Cir. 1992)(forfeiture of $1,0900,000 worth of property and a 36-month sentence after the claimant was convicted of manufacturing 104 marijuana plants on the property was not disproportionate or excessive because it was within the statutory limits.); United States v. Harris, 903 F.2d 770 (10th Cir. 1990)(forfeiture of $413,493 was not disproportionate under the Solem factors with respect to claimant's conviction of possession with intent to distribute three-quarters of a pound of marijuana); United States v. Certain REal Property & Premises Known as 38 Whalers

Cove Drive, Babylon, New York, 954 F.2d 29 (2nd Cir. 1992) (upheld the forfeiture of a claimant's $687,000 interest in a condominium in which the claimant had made two sales of cocaine for a total of $250). The forfeiture of the defendant property is not disproportionate when analyzed under the Solem factors and does not violate the excessive fines clause of the Eight Amendment.

C. Motion to Extend Time to File Pretrial Order

The plaintiff requests an extension of time to file a pretrial order until thirty days after the ruling on the motions for summary judgment. This motion is denied. There is no need for the government to file a pretrial order as the government's motion for summary judgment is granted pursuant to this order.

Conclusion

Claimant Dyer's Trout Farms motion for extension of discovery is hereby DENIED [32-1]. The United States' motion to compel responses to discovery is hereby GRANTED [33-1]. Claimant's motion to stay the proceedings is DENIED [37-1]. The plaintiff's motion for summary judgment is GRANTED [38-1] and the claimant's motion for summary judgment is DENIED [41-1]. Plaintiff's motion for extension of time is DENIED [38-2].

IT IS SO ORDERED this 18th day of January, 1994.

WILLIAM C. O'KELLEY
Chief United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-8158

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROUTE 2, BOX 472, 136.00 Acres more or less, Land lying and being in Land Lot 221 of the 18th district, 1st Section, Towns County, Georgia with mailing address Route 2, Box 472, Hiawassee, Georgia,

Defendant.

DYER'S TROUT FARMS, INC.

Claimant-Appellant

NORTH GEORGIA FARM CREDIT, ACA
FEDERAL CREDIT BANK OF COLUMBIA,

Claimants.

On Appeal from the United States
District Court for the
Northern District of Georgia

O R D E R:

Susan Dyer's motion to intervene as climant on appeal is denied.[4]

Emeritis R. Cox
UNITED STATES CIRCUIT JUDGE

---

[4]. The cover memorandum stated that "In light of the enclosed order, no action to be taken on motion to stay enforcement.

IN THE SUPERIOR COURT OF TOWNS COUNTY
STATE OF GEORGIA

SUSIE DYER

Plaintiff,

CIVIL ACTION
FILE NO. 94-CV-40DB

v.

136.00 ACRES MORE OR LESS, LAND LYING AND BEING IN LAND LOT 221 OF THE 18TH DISTRICT, 1ST SECTION, TOWNS COUNTY, GEORGIA WITH MAILING ADDRESS ROUTE 2, BOX 472, HIAWASSEE, GEORGIA,

TITLED IN THE NAME OF: DYER'S TROUT FARMS, INC.

Defendant

MEMORANDUM OF HEARING

The above matter came on regularly for hearing on pending motions on June 28, 1994. The plaintiff was present accompanied by her attorney, Nancy Lord; the cliamant, the United States, was represented by Assistant U.S. Attorney, Janice TReu; and claimant, Dyers Trout Farms, Inc., was represented by attorney John R. Martin.

Arguments were presented by counsel on the United States' "Motion to Dismiss" for lack of jurisdiction, and the plaintiff's "Motion for Default Judgment". In the course of the arguments it was disclosed to this Court that there is presently pending in the United States Eleventh Circuit Court of Appeals an appeal from the decision of the United STates District Court in a civil action adjudicating forfeiture of the real property which is the subject of this litigation. It would appear that the appellate decision on that issue should be forthcoming within the next few months, and this Court, therefore determines that no ruling will be made on the pending motions in this Towns County case until after the decision of the United States Eleventh Circuit Court of Appeals is rendered. It is anticipated that the Court of Appeals' decision will clarify and give guidance concerning the legality of the

"forfeiture" proceedings and the propriety and present posture of the claimants', the United States and Dyers Trout Farms, Inc. After the Eleventh Circuit Court of Appeals' decision is rendered and reviewed by counsel they will then advise the undersigned trial judge and a determination will be made at that time as to whether further oral arguments should be had on the issues now pending in the Towns County case.

This 29 day of June, 1994.

_____
John S. Langford, Senior JUdge
Superior Courts of Georgia
Sitting by Designation in the
Superior Court of Towns County

ORIGINAL FOR FILING TO:

Honorable Cecil Ray Dye
Clerk, Towns Superior Court

COPIES TO:

Ms. Nancy Lord
Attorney at Law

Mr. John R. Martin
Attorney at Law

Ms. Janice Treu
Assistant
U.S. Attorney

Mr. Douglas McDonald
Attorney at Law